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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 4610 OF 1991

Gajanan Yadav Hire

.. Petitioner

since deceased by his legal heirs

Sou.Alka Ashok Sonwane & ors

vs

Abdulla Ibrahim Momin & anr

... Respondents

Mr.K.V.Patwardhan for Mr.S.G.Deshmukh for Petitioner

Mr.S.M.Gorwadkar for Respondent

CORAM : D.G.KARNIK, J

DATE: 30TH AUGUST, 2004.

P.C.

1. By this petition, the petitioner-tenant challenges the judgment and order dated 23rd August, 1991 passed by the learned Additional District Judge, Nasik allowing respondents-landlord's appeal bearing Civil Appeal No. 56 of 1987 and thereby passing a decree for possession.

2. The petitioner is a tenant and the respondents are the landlords of the suit premises. The suit premises are let out to the petitioner on a monthly rent of Rs.13/-. The month of tenancy commences on the 12th day and expires on the 11th of the next British calendar month. On 12th July, 1980 respondents issued a notice to the petitioner claiming arrears of rent from 12th

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December, 1978 to 11th July, 1980 amounting to Rs.247/- at the rate of Rs.13/- per month. The notice was received by the petitioner on 14th July, 1980. As the petitioner failed and neglected to pay the rent within one month of the date of receipt the notice, the respondents filed a suit bearing Regular Civil Suit No. 117 of 1981 in the Court of Civil Judge, Junior Division, Yeola against the petitioner for possession. By the judgment and order dated 30th December, 1986 the learned Civil Judge, Junior Division, Yeola dismissed the suit for possession but passed a decree for arrears of rent. The appeal filed by the respondents was allowed on 22nd August, 1987 by the District Court, Nasik. That judgment is impugned in this petition.

3. The respondents issued a notice of demand on 12th July, 1980. The notice was received by the petitioner on 14th July, 1980. There is no dispute about the standard rent. In any event, the petitioner did not file an application for determination of the amount of standard rent within one month of the receipt of notice nor did he pay the arrears of rent as demanded in the notice. In the suit filed by the respondents, the petitioner contended that he had paid the rent but the respondents had not issued the rent receipts. His contention was that the respondents were never issuing rent receipts. The respondents denied that they were not issuing rent

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receipts. One rent receipt was produced by petitioner which itself shows that the respondents were issuing the rent receipts. The respondent no. 1 stated that counter foils of the rent receipts were burnt in the fire in the shop and therefore he could not produce any counter foils but he contended that the rent receipts were regularly issued. The appellate Court believed that the rent receipts were issued and also believed that the rent was not paid from 12th December, 1978. This being the finding of fact recorded by the appellate Court for cogent reasons cannot be interfered with in writ jurisdiction under Article 227 of the Constitution of India.

4. Admittedly, within one month of the date of receipt of notice, the petitioner did not pay the rent. He also did not file an application for determination of the amount of standard rent. As such, a case for eviction under section 12 (3) (a) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 is made out. Learned counsel for the petitioner however contends that the petitioner had sent a money order of Rs.15/- on 12th June, 1980 which was wrongfully refused by the respondents and therefore the petitioner is not a defaulter in payment of rent. In June, 1980 the petitioner was in arrears of rent for 18 months and sent money order of rent for only 1 month. The respondent was therefore

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justified in refusing the money order. Thereafter, the respondent issued a notice demanding arrears of rent for 19 months. The petitioner did not pay the rent despite demand. Hence, the appellate Court has rightly held that the petitioner was defaulter in payment of rent and has rightly passed a decree for possession. No ground for interference is made out.

5. There is no merit in the petition. Petition is therefore, dismissed. Rule discharged with costs.

D.G.KARNIK, J